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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,421	03/29/2001	Jay H. Connelly	42390P10861	9401

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EXAMINER
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STERRETT, JONATHAN G

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/823,421		CONNELLY, JAY H.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Jonathan G. Sterrett		3623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6-16-2003</u> | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This **Office Action** is responsive to applicant's amendment filed October 7, 2005. Applicant's amendment of October 7, 2005 amended **Claims 1-3, 14-16, and 23-25**. Currently **Claims 1-27** are pending.

### *Response to Arguments*

2. Applicant's arguments filed on October 7, 2005 have been fully considered but they are not persuasive.

The applicant argues that because Gerace '396 addresses receiving information over the internet, it does not remotely relate to a broadcast product.

The examiner respectfully disagrees. The internet is clearly a type of broadcasting, since it provides information at one time to a variety of end terminals. Thus, the informational product described by Gerace '396 is broadcast over the internet where feedback data is received from the clients regarding the broadcast product. (The examiner refers the applicant to the definition of "broadcast" as provided by Rosenberg, Jerry M, "Dictionary of computers, information processing & telecommunications", 2<sup>nd</sup> Edition, 1987, p.65. Here, "broadcast" is defined as: "the dissemination of information to several receivers simultaneously, usually via electromagnetic signals", in view of this definition, amending the claims to include "a broadcast product" does not patentably distinguish the claimed invention from the cited prior art).

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would combine Gerace '735 and Abelow for the following reasons. Both Gerace '735 and Abelow both address receiving feedback from remote computing devices, thus both Gerace '735 and Abelow are analogous art. Additionally, one of ordinary skill in the art would find motivation to combine Abelow with Gerace because of the motivation provided by Abelow. Abelow teaches, as noted below, that receiving feedback from users of a product while the product is in use allows the vendor of the product to immediately understand the likes and dislikes of the product. The motivation to combine is provided by the benefit to be realized by receiving immediate feedback regarding the likes and dislikes of a customer for a product and the strategic advantage that provides a vendor.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only

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knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerace US 5,848,396.

Regarding Claim 1, Gerace discloses:

**receiving a request to obtain consumer feedback on a broadcast product**

column 12 line 59-60, sponsors of advertisements can obtain reports through requesting them, advertisements are a type of broadcast product.

**sending at least one product description data to a plurality of clients**

column 12 line 7-10, ad package object comprises product description data; column 8 line 13-16, ads are displayed on webpages of a plurality of clients;

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**receiving a feedback data on the broadcast product from each of the plurality of clients transparent to the user of the clients**

column 12 line 57-63, computer subroutine, transparent to user, records successful use of advertisements (ads are a type of broadcast product), including hits and click-throughs;

**wherein the feedback data is based on information stored in a memory device of each of the clients**

column 6 line 49-55, referring link from which the user accessed the program, the user's identification number from a cookie, and an indication of the web browser software employed by the user's computer are all feedback data based on information stored in an individual user's computer (i.e. memory device of each of the clients).

Column 6 line 46-49, the feedback data is automatically obtained from the user session object (Figure 3a #37d) from the user's computer (i.e. memory device from each of the clients).

**processing a consumer feedback summary based on the feedback data on the broadcast product**

column 13 line 9-11, Demographic Response Rate Report for advertisements (ads are a type of broadcast product).

Regarding **Claim 2**, Gerace discloses:

**communicating the consumer feedback summary to a product provider of the broadcast product**

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column 18 line 51-53, sponsor request for report causes reporting subroutine to communicate the report back to the sponsor (sponsor of the advertisement; ads are a type of broadcast product).

Regarding **Claim 3**, Gerace discloses:

**wherein the request to obtain consumer feedback is received from a product provider of the broadcast product.**

column 12 line 7-9, sponsors have ad packages which can be for products, services or any other information found in advertisements (as noted above the ads themselves are a type of broadcast product).

Regarding **Claim 10**, Gerace discloses:

**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more ways of marketing a product.**

column 19 line 48-50, sponsor can create a customized report to follow success of advertisement; column 19 line 66-column 20 line 6, program 31 allows sponsors to compare success rates of different advertisements and advertising aspects.

Regarding **Claim 11**, Gerace discloses:

**wherein the consumer feedback summary comprises a marketing success comparison data**

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column 19 line 66-column 20 line 6, program 31 allows sponsors to compare success rates of different advertisements and advertising aspects.

Regarding **Claim 12**, Gerace discloses:

**wherein the product description data comprises meta-data**

column 12 line 28-32, profile information in ad series object comprises metadata.

Regarding **Claim 13**, Gerace discloses:

**the product description data comprises program guide information**

column 22 line 43-52, media and TV schedule information comprises program guide information.

**Claims 14-16 and 20-27** recite similar limitations as those recited in **Claims 1-3 and 10-13** above, and are therefore rejected under the same rationale.

Regarding **Claim 14**, Gerace discloses all the limitations above in Claim 1, and also discloses a broadcast center server (i.e. web server – see Figure 2 #27 and column 4 line 45-50 regarding operation of the web server).



***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 4-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerace US 5,991,735 in view of Abelow US 5,999,908.

Regarding **Claim 4**, Gerace teaches obtaining customer feedback transparent to the user regarding advertisements.

Gerace doesn't teach:

**wherein the request to obtain consumer feedback comprises a request to test the success of one or more products.**

Abelow does teach:

**wherein the request to obtain consumer feedback comprises a request to test the success of one or more products**

column 9 line 38-39, module obtains findings during the course of product uses; column 19 line 54-56, automatic findings from field trials for product uses; column 33 line 3; module can obtain data from passive interactions, where the user is unaware that data is being gathered on their use of product; column 38

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line 61-67, product performance may be passively gathered without the customer's involvement; column 18 line 24-26, customer feedback addresses success of product while in use.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes arising from use of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with the request to obtain consumer feedback comprises a request to test the success of one or more products, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while a product was being used.

Regarding **Claim 5**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements were viewed**

(column 13 line 11-12, ad success data used in regression).

Gerace does not teach:

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**wherein the consumer feedback summary comprises a product success data for each of the one or more products.**

Abelow teaches:

**wherein the consumer feedback summary comprises a product success data for each of the one or more products**

column 18 line 67 – column 19 line 3, vendors can apply module to all of the products in a particular market to obtain feedback regarding success and failure of product in that market to better tailor products for that market; column 25 line 20-23, digital data capturing customer interactions is transmitted back to vendor's computer; column 55 line 15-19, reports of customer feedback quantitative information is presented in a way that is easily understood.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customer's likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with the request to obtain consumer feedback comprises a product success data for each of the one or more products, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used.

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Regarding **Claim 6**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements were viewed**

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

wherein the request to obtain consumer feedback comprises a request to compare the success of two or more attributes of a product.

Abelow teaches:

**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more attributes of a product**

column 38 line 17-12, data gathered on features that customers use.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with wherein the request to obtain consumer feedback comprises a request to

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compare the success of two or more attributes of a product, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used.

Regarding **Claim 7**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements were viewed**

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

**wherein the consumer feedback summary comprises an attribute success comparison data.**

Abelow teaches:

**wherein the consumer feedback summary comprises an attribute success comparison data**

column 42 line 33-35, benchmarking probes capture data what the customers like about the product while using it, including that of various attributes of the product; column 55 line 30-36, various reports are available including graphs which provide ability to compare the success data.

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Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with wherein the consumer feedback summary comprises an attribute success comparison data, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used, where the feedback provided ability to compare the success of various attributes of the product.

Regarding **Claim 8**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements were viewed**

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more products.**

Abelow teaches:

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**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more products.**

column 42 line 20-24, benchmark probes solicit customer feedback regarding competing products.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with wherein the request to obtain consumer feedback comprises a request to compare the success of two or more products, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used, where the feedback provides the ability to understand the success of two or more products in the marketplace.

Regarding **Claim 9**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements were viewed**

column 13 line 11-12, ad success data used in regression.

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Gerace does not teach:

**wherein the consumer feedback summary comprises a product success comparison data.**

Abelow teaches:

**wherein the consumer feedback summary comprises a product success comparison data**

column 9 line 38-39, module obtains findings in the middle of product uses; column 19 line 54-56, automate findings from field trials for product uses; column 33 line 3; module can obtain data from passive interactions, where the user is unaware that data is being gathered on them; column 38 line 61-67, product performance may be passively gathered without the customer's involvement; column 18 line 24-26, customer feedback addresses success of product while in use; column 55 line 15-29, customer based product design reports presents quantitative information in a way that is easily understood by the customer, including graphs and charts where comparisons can easily be made.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with wherein the consumer feedback summary comprises a product success comparison data, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from



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customers while products were being used, where the feedback provides the ability to compare the success of a product in the marketplace.

**Claims 17-19** recite similar limitations as those recited in **Claims 4-9** above, and are therefore rejected under the same rationale.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rosenberg, Jerry M, "Dictionary of computers, information processing & telecommunications", 2<sup>nd</sup> Edition, 1987, p.65.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is (571) 272-6881. The examiner can normally be reached on Monday-Friday, 8:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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11/1/2005



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